title may I refer to section 47(1) of the Bankruptcy Act, the relevant portion of which reads—

"47.(1) The bankruptcy of a debtor, whether the same takes place on the debtor's own petition or upon that of a creditor, shall be deemed to have relation back to and commence at the time of the act of bankruptcy being committed on which a receiving order is made against him, or...."

The Official Assignee's title would thus commence on December 29, 1970 some one month and 20 days before the date of the receipt by the respondents of money attached. I would therefore order that the respondents do pay the sum of $67,319.95 to the applicant as trustee of the property of the bankrupts and costs.

Order accordingly.

Solicitors: *Shearn, Delamore & Co.*

MEOW KIM YENG @ MEOW LENG HAWN v. CHOOW YIK GHEE & ANOR.

[O.C.J. (Abdoolcader J.) April 1, 1975]
[Ipoh — Civil Appeal No. 27 of 1973]

Control of Rent Act, 1966 — Statutory tenancy — Prior to commencement.

Any protection afforded to a statutory tenant under the precursor to the Control of Rent Act, 1966, is not recognised, perpetuated or preserved by the current Act.

Case referred to:-

(1) *United India Fire & General Insurance Co. Ltd.* v. *Jaffnese Co-operative Society Ltd.* [1971] 1 M.L.J. 118.

CIVIL APPEAL.

Chinn Swee Onn for the appellant.

Chandran G. Nair for the respondents.

Abdoolcader J.: The appellant appealed to this court against the decision of the Magistrate's Court at Ipoh ordering the appellant to deliver vacant possession of the right front half portion and a room at the back on the ground floor of premises No. 17, Clarke Street, Ipoh, to the respondents, with mesne profits at the rate of $180 per month and costs of the action to be paid by the appellant.

The facts of this case are briefly that the respondents had let the whole of the ground floor of the premises to Khong Kok Leng trading as Foong Ming Ladies Dressmaking. The appellant claimed to be a sub-tenant of Khong Kok Leng in respect of the portion occupied by him but the respondents dispute this and sued for possession on the basis that at most the appellant was only a licensee of their tenant. The tenant had surrendered her tenancy on November 30, 1971, and the respondents then gave notice to the appellant to quit the premises on the basis that he was then a trespasser and subsequently instituted proceedings for possession. The appellant in his defence claimed to be a lawful sub-tenant of Khong Kok Leng, and pleaded the protection of section 17 of the Control of Rent Act, 1966.

The learned Magistrate seems to have decided this case primarily on the basis of the decision of the Federal Court in *United India Fire & General Insurance Co. Ltd.* v. *Jaffnese Co-operative Society Ltd.*,[1] but it is abundantly clear that the learned Magistrate wholly misdirected himself on the application of this decision and, indeed, counsel for the respondents conceded at the hearing of the appeal before me that this was indeed so. In the present case, the appellant entered into possession of the portion of the ground floor of the premises occupied by him in September, 1968, and of the room at the back on the ground floor in September, 1971, during the subsistence of the contractual tenancy of the tenant in respect of the whole of the ground floor and, apart from the question as to whether the appellant was a sub-tenant or a licensee, this was not disputed by the respondents. In the *United India Fire* case, *supra*, the owners of certain premises had given notice to quit to their tenants and after the expiry of the notice to quit the tenants continued to occupy the premises and subsequently purported to sub-let a portion of the premises to others. It was held that under the Control of Rent Act, 1966 a contractual tenant who is no longer such after the determination of his contractual tenancy holds over only by virtue of the protection afforded by section 16(1) of the Act, and cannot transmit his own privilege of irremovability to a third party, whether by assignment or sub-letting, and Ong C.J., in his judgment (at page 122) made it abundantly clear that the appellants' case would have been unassailable had they been given a subtenancy by a contractual tenant.

The question then arose for consideration as to whether or not there in fact had been a lawful subletting to the appellant of the portion occupied by him. There was abundant evidence to that effect. The tenant (PW1) gave evidence that she had sub-let the premises to the defendant and that there was no term prohibiting sub-letting on her part and repeated this in cross-examination. Counsel for the respondents again conceded before me that there is in fact a body of evidence to show lawful sub-letting to the appellant. The first respondent merely said that he had mentioned to the previous proprietor of Foong Ming Dressmaker, who later retired leaving that concern in the hands of the tenant, "not to sub-let the place to anybody." There was no term or condition prohibiting assignment or sub-letting in the rent receipts issued by the respondents to the tenant, and the respondents would also by a letter written by their solicitors to the tenant on September 24, 1968, and by their conduct generally appear to be estopped from questioning the status of the appellant as a lawful sub-tenant. I therefore found that there was no prohibition against sub-letting and the appellant was accordingly a lawful sub-tenant.

The respondents apparently raised in the Magistrate's Court the contention that when they found the appellant in occupation of the portion of the premises in question they raised this immediately with the tenant but did not pursue the matter on receiving an assurance from the tenant that the appellant would leave when the tenant gives up her tenancy. Again, on the evidence it was clear that although the tenant may have said this to the respondents or either of them, there is no evidence to show that in fact the appellant agreed to this and, indeed, the tenant (PW1) said that when she spoke to this effect to the landlady, presumably referring to the

second respondent, she was not sure if the appellant was there, and later resiled in cross-examination by stating that she could not remember whether she told the respondents this. The appellant in evidence denied that he was ever told this. In any event, even assuming that there had been any such arrangement it would be tantamount to an agreement to contract out of the provisions of the Control of Rent Act, 1966 which would be unenforceable.

The only point taken by counsel for the respondents at the hearing of this appeal was that the learned Magistrate was wrong in holding that the tenancy between the respondents and the tenant (PW1) was a contractual tenancy and that in fact it was a statutory tenancy. He agreed that this matter was never raised or mooted at all in the Magistrate's Court except in the reference in paragraph 3 of the Statement of Claim that the tenant of the ground floor of the premises was a statutory tenant, but argued before me that as such the tenant had no right to sub-let a portion of the premises occupied by her to the appellant. I find this contention wholly devoid of merit as it is absolutely clear that there is no longer any such entity as a statutory tenant, and any protection afforded to a statutory tenant under the precursor to the Control of Rent Act, 1966 is not recognised, perpetuated or preserved by the current Act. A tenant is only protected to the extent afforded by the provisions of section 16(1) of the Control of Rent Act, 1966 after the determination of his contractual tenancy. Any status therefore that the tenant had prior to January 1, 1967, when the 1966 Act came into force, would therefore be wholly immaterial and irrelevant. This indeed was the basis of the decision in the *United India Fire* case, *supra*.

In the circumstances of the misdirection of the learned Magistrate in the application of the *United India Fire* case, *supra*, and the substantial evidence adduced that the appellant was in fact a lawful subtenant of the tenant (PW1), a fact conceded by counsel for the respondents, I allowed the appeal, set aside the judgment of the learned Magistrate and dismissed the respondents' claim and ordered them to pay the costs of the appeal.

Appeal allowed.

Solicitors: *Chin Swee Onn; Thevin, Chandran & Siva.*

KARAM SINGH v. PUBLIC PROSECUTOR

[A.Cr.J. (Raja Azlan Shah F.J.) August 8, 1974]
[Alor Star — Kedah Criminal Appeal No. 20 of 1974]

Contempt of Court — Summary committal — Advocates & Solicitors Ordinance, 1947, s. 27.

Legal Profession — Control of practitioners — Advocates & Solicitors Ordinance, 1947, s. 27.

This was an appeal by an advocate and solicitor against summary conviction and sentence of 2 weeks' imprisonment. The facts disclosed in the record were that there was a heated argument between the magistrate and the appellant who was appearing on behalf of a defendant in a case concerning impersonation. The learned magistrate adjourned into chambers for 15 minutes and after considering the matter returned to the Bench and decided to deal with the appellant summarily.

Held: (1) a magistrate's summary power to proceed of his own motion must never be invoked unless the ends of justice really required such drastic means. The magistrate should not be both the prosecutor and the judge;

(2) in this case the learned magistrate should have adjourned the matter and reported it to the local Bar Committee.

CRIMINAL APPEAL.

Karpal Singh for the appellant.

Yap Cheng Boon (Deputy Public Prosecutor) for the respondent.

Raja Azlan Shah F.J. (delivering oral judgment): This is an appeal by an advocate and solicitor against summary conviction and sentence of two weeks' imprisonment.

The facts so far disclosed in the record are that there was a heated argument between the magistrate and the learned counsel who was appearing on behalf of a defendant in a case concerning impersonation under section 170 of the Penal Code.

The learned magistrate adjourned into chambers for 15 minutes and after considering the matter returned to the Bench and decided to deal with the appellant summarily. The question here is whether the facts are sufficient to warrant summary committal for contempt.

Insulting behaviour by counsel, however reprehensible, may or may not be contempt depending on the surrounding circumstances. But, in my view, a magistrate's summary power to proceed of his own motion must never be invoked unless the ends of justice really required such drastic means. No doubt it appeared to be rough justice, it is contrary to natural justice and can only be justified if nothing else would do. Therefore this power must be exercised with scrupulous care and only when the case is clear beyond reasonable doubt. In my view, it is only in urgent cases a magistrate should take on himself to move. He should, in my view, leave it to the local Bar Committee to move in accordance with section 27 of the Advocates & Solicitors Ordinance, 1947. The magistrate should not appear to be both prosecutor and judge — a role which does not become him well.

In my opinion, it was not a case for summary punishment because it was not sufficiently urgent or imperative. He would have done well if he had adjourned the case and reported the matter to the local Bar Committee. The power which a magistrate possesses is both salutary and dangerous. The present appeal gives an opportunity to make clear that it should be used reluctantly but fearlessly when and only when it is necessary to prevent justice from being obstructed or undermined. That is not because judges, witnesses and counsel who are officers of the court, take themselves seriously, but because justice, whose servants we all are, must be taken seriously in a civilized society if the rule of law is to be maintained. Therefore in this case the learned magistrate should have adjourned the matter and reported it to the local Bar Committee, which I propose to do now.

However, I would set aside the conviction and sentence.

Conviction and sentence set aside.

Solicitors: *Karpal Singh, Wong & Co.*